

## § 416.1249

In-kind gifts converted to cash are considered under income counting rules in the month of conversion.

[70 FR 41139, July 18, 2005]

### **§ 416.1249 Exclusion of payments received as restitution for misuse of benefits by a representative payee.**

In determining the resources of an individual (and spouse, if any), the unspent portion of any payment received by the individual as restitution for title II, title VIII or title XVI benefits misused by a representative payee under § 404.2041, § 408.641 or § 416.641, respectively, is excluded for 9 months following the month of receipt.

[70 FR 41139, July 18, 2005]

### **§ 416.1250 How we count grants, scholarships, fellowships or gifts.**

(a) When we determine your resources (or your spouse's, if any), we will exclude for 9 months any portion of any grant, scholarship, fellowship, or gift that you use or set aside to pay the cost of tuition, fees, or other necessary educational expenses at any educational institution, including vocational or technical institutions. The 9 months begin the month after the month you receive the educational assistance.

(b)(1) We will count as a resource any portion of a grant, scholarship, fellowship, or gift you (or your spouse, if any) did not use or set aside to pay tuition, fees, or other necessary educational expenses. We will count such portion of a grant, scholarship, fellowship or gift as a resource in the month following the month of receipt.

(2) If you use any of the funds that were set aside for tuition, fees, or other necessary educational expenses for another purpose within the 9-month exclusion period, we will count such portion of the funds used for another purpose as income in the month you use them.

(3) If any portion of the funds are no longer set aside for paying tuition, fees, or other necessary educational expenses within the 9-month exclusion period, we will count the portion of the funds no longer set aside as income in the month when they are no longer set aside for paying tuition, fees, or other

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necessary educational expenses. We will consider any remaining funds that are no longer set aside or used to pay tuition, fees, or other educational expenses as a resource in the month following the month we count them as income.

(4) We will count any portion of grants, scholarships, fellowships, or gifts remaining unspent after the 9-month exclusion period as a resource beginning with the 10th month after you received the educational assistance.

[71 FR 45378, Aug. 9, 2006]

### **§ 416.1260 Special resource provision for recipients under a State plan.**

(a) *General.* In the case of any individual (or individual and spouse, as the case may be) who for the month of December 1973 was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI, of the Act (see § 416.121), the resources of such individual (or individual and spouse, as the case may be) shall be deemed not to exceed the amount specified in § 416.1205 during any period that the resources of such individual (or individual and spouse, as the case may be) do not exceed the maximum amount of resources specified in such State plan as in effect in October 1972, provided that such individual:

(1) Has, since December 1973, resided continuously in the State under whose plan he was eligible for the month of December 1973; and

(2) Has not, since December 1973, been ineligible for an SSI benefit for a period exceeding 6 consecutive months. An SSI benefit means a Federal benefit only; it does not include any State supplementation.

(b) For purposes of this section, an individual will cease to reside continuously in a State if he leaves the State with the present intention to abandon his home there. In the absence of evidence to the contrary,

(1) If an individual leaves the State for a period of 90 calendar days or less, his absence from the State will be considered temporary and he will be considered to continue to reside in such State; and

(2) If an individual leaves the State for a period in excess of 90 calendar